

MORRISON | FOERSTER

425 MARKET STREET
SAN FRANCISCO
CALIFORNIA 94105-2482

TELEPHONE: 415.268.7000
FACSIMILE: 415.268.7522

WWW.MOFO.COM

MORRISON & FOERSTER LLP
NEW YORK, SAN FRANCISCO,
LOS ANGELES, PALO ALTO,
SAN DIEGO, WASHINGTON, D.C.

DENVER, NORTHERN VIRGINIA,
ORANGE COUNTY, SACRAMENTO,
WALNUT CREEK, CENTURY CITY

TOKYO, LONDON, BEIJING,
SHANGHAI, HONG KONG,
SINGAPORE, BRUSSELS

RECEIVED
CENTRAL FAX CENTER

APR 07 2005

To:

| NAME: | FACSIMILE: |
|--|----------------|
| U.S. Patent and Trademark Office MS Amendment | (703) 872-9306 |

FROM: Michael R. Ward - Reg. No. 38,651

DATE: April 7, 2005

NUMBER OF PAGES WITH COVER PAGE: 16

Preparer of this slip has confirmed that facsimile number given is correct: 10382/cdc5

CAUTION - CONFIDENTIAL

This facsimile contains confidential information which may also be privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not copy, use, or distribute it. If you have received it in error, please advise Morrison & Foerster LLP immediately by telephone or facsimile and return it promptly by mail.

Attorney Docket No.: 546322000303
Group Art Unit: 1635
Examiner: S.R. McGarry
Application No.: 10/646,070
Filing Date: August 22, 2003
Inventors: Michael W. GRAHAM et al.
Title: Control of Gene Expression

Papers attached herewith:

1. Transmittal (1 page);
2. Copy of Notice of Non-Compliant Amendment (2 pages); and
3. Amendment (12 pages).

sf-1836272

PTO/SB/21 (09-04)

Approved for use through 07/31/2006. OMB 0831-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM

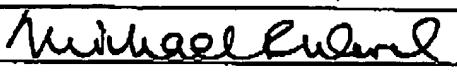
(to be used for all correspondence after initial filing)

| | | | |
|--|----|------------------------|-------------------|
| | | Application Number | 10/646,070 |
| | | Filing Date | August 22, 2003 |
| | | First Named Inventor | Michael W. GRAHAM |
| | | Art Unit | 1635 |
| | | Examiner Name | S. R. McGarry |
| Total Number of Pages in This Submission | 15 | Attorney Docket Number | 546322000303 |

ENCLOSURES (Check all that apply)

| | | |
|---|---|---|
| <input type="checkbox"/> Fee Transmittal Form | <input type="checkbox"/> Drawing(s) | <input type="checkbox"/> After Allowance Communication to TC |
| <input type="checkbox"/> Fee Attached | <input type="checkbox"/> Licensing-related Papers | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences |
| <input checked="" type="checkbox"/> Amendment/Reply - 12 pages | <input type="checkbox"/> Petition | <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) |
| <input type="checkbox"/> After Final | <input type="checkbox"/> Petition to Convert to a Provisional Application | <input type="checkbox"/> Proprietary Information |
| <input type="checkbox"/> Affidavits/declaration(s) | <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address | <input type="checkbox"/> Status Letter |
| <input type="checkbox"/> Extension of Time Request | <input type="checkbox"/> Terminal Disclaimer | <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): |
| <input type="checkbox"/> Express Abandonment Request | <input type="checkbox"/> Request for Refund | * Copy of Notice of Non-compliant Amendment - 2 pages |
| <input type="checkbox"/> Information Disclosure Statement | <input type="checkbox"/> CD, Number of CD(s) _____ | * Fax Cover Sheet |
| <input type="checkbox"/> Certified Copy of Priority Document(s) | <input type="checkbox"/> Landscape Table on CD | |
| <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application | | |
| <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53 | | |
| Remarks | | |

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

| | | | |
|--------------|---|----------|--------|
| Firm Name | MORRISON & FOERSTER LLP (Customer No. 20872) | | |
| Signature |  | | |
| Printed name | Michael R. Ward | | |
| Date | April 7, 2005 | Reg. No. | 38,651 |

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office, Centralized Fax No. (703) 872-8306, on the date shown below.

Dated: 4/7/05Signature: Christa Carter Christa Carter

sf-1901856

| | | |
|---|--|---|
| Notice of Non-Compliant Amendment (37 CFR 1.121) | Application No. 10/646,070 Examiner Sean R. McGarry | Applicant(s) GRAHAM ET AL. Art Unit 1635 |
|---|--|---|

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

The amendment document filed on 12/15/04 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- 1. Amendments to the specification:
 - A. Amended paragraph(s) do not include markings.
 - B. New paragraph(s) should not be underlined.
 - C. Other _____.
- 2. Abstract:
 - A. Not presented on a separate sheet, 37 CFR 1.72.
 - B. Other _____.
- 3. Amendments to the drawings:
 - A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - C. Other _____.
- 4. Amendments to the claims:
 - A. A complete listing of all of the claims is not present.
 - B. The listing of claims does not include the text of all pending claims (including withdrawn claims).
 - C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Cancelled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - D. The claims of this amendment paper have not been presented in ascending numerical order.
 - E. Other: Applicant has corrected the numbering of the second occurring claim 98 to claim 99 under Rule 1.126. The claims itself has not been amended and therefore has been erroneously indicated as "currently amended".

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opia/preonnotice/officenew.pdf>.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given no new time period if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the entire corrected amendment must be resubmitted within the time period set forth in the final Office action.
2. Applicant is given one month, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the corrected section of the non-compliant amendment in compliance with 37 CFR 1.121, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a Quayle action.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a Quayle action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

*Presp. Due
DOCKETED*

*SEAN McGARRY
PRIMARY EXAMINER*

3.15.05

4.7.05

APR. 7. 2005 3:31PM MOFO 28TH FL

NO. 544 P. 16



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/546,070 | 08/22/2003 | Michael Wayne Graham | 546322000303 | 8796 |
| 20372 | 7590 | 03/07/2005 | | |
| MORRISON & FOERSTER LLP 425 MARKET STREET SAN FRANCISCO, CA 94105-2482 | | | EXAMINER | |
| | | | MCGARRY, SEAN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1635 | |

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.